

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

United States of America)	
)	Cr. No. 6:06-633-HMH
vs.)	
)	OPINION & ORDER
Geidy Verjano,)	
)	
Movant.)	

This matter is before the court on Geidy Verjano’s (“Verjano”) motion for modification of sentence pursuant to 18 U.S.C. § 3582(c)(2). After pleading guilty on August 31, 2006, to one count of conspiracy to possess with intent to distribute 500 grams or more of cocaine, Verjano was sentenced to 60 months’ imprisonment on December 6, 2006.

Section 3582(c)(2) allows the court to reduce a defendant’s sentence if it was based on a sentencing range which was subsequently lowered by an amendment to the United States Sentencing Guidelines (“U.S.S.G.”) and if that reduction would be consistent with the policy set forth in the guidelines. See 18 U.S.C. § 3582(c)(2). Section 1B1.10(a)(1) of the U.S.S.G. states:

In a case in which a defendant is serving a term of imprisonment, and the guideline range applicable to that defendant has subsequently been lowered as a result of an amendment to the Guidelines Manual listed in subsection (c) below, the court may reduce the defendant’s term of imprisonment as provided by 18 U.S.C. § 3582(c)(2).

U.S. Sentencing Guidelines Manual § 1B1.10(a)(1) (2008). Verjano argues that pursuant to “corollary criminal history category (Amendment 12) [sic],” which the court believes is a reference to Amendment 709 of the United States Sentencing Guidelines, she is entitled to a

reduction of her sentencing range. Verjano alleges that her criminal history category should be lowered pursuant to this amendment. Amendment 709 became effective on November 1, 2007. Further, Amendment 709 is not included in U.S.S.G. § 1B1.10(c) as an amendment to be applied retroactively; therefore, it is not retroactive. See id. § 1B1.10(a); see also, United States v. Chavez, Cr. No. C-03-196, 2008 WL 4449900, at *2 (S.D. Tex. Sept. 30, 2008) (unpublished).

It is therefore

ORDERED that Verjano's section 3582(c)(2) motion, docket number 120, is denied.

IT IS SO ORDERED.

s/Henry M. Herlong, Jr.
United States District Judge

Greenville, South Carolina
January 6, 2009

NOTICE OF RIGHT TO APPEAL

Movant is hereby notified that she has the right to appeal this order within ten (10) days from the date hereof, pursuant to Rule 4 of the Federal Rules of Appellate Procedure.